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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.882 of 2003

APPELLANT	Vijendra Lal son of Girja Shankar Rajwar, aged 24 years, resident of Village Barra, Out Post Korbi, P.S. Pasan, Distt. Korba (C.G.)
	Versus
RESPONDENT	State of Chhattisgarh Through P.S. Pasan, Distt. Korba (C.G.)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri Suryakant Mishra, counsel for the appellant.

Shri U.N.S. Deo, Govt. Advocate/ Additional Public Prosecutor for the State.

ORAL JUDGMENT
(21.05.2007)

SUNIL KUMAR SINHA, J.

Heard.

(1) This appeal is directed against the judgment of conviction and order of sentences dated 24.2.2003, passed in Sessions Trial No.474/2001 by the Sessions Judge, Bilaspur, (C.G.), whereby the said Court after holding the appellant guilty of the offence punishable under Sections 450 & 376 (1) of I.P.C., sentenced him to undergo R.I. for 5 years and to pay a fine of Rs.300/-, in default of payment of fine, to further undergo S.I. for one month; and R.I. for 7 years and to pay a fine of Rs.300/-, in default of payment of fine, to further undergo S.I. for one month with a further direction to run the sentences concurrently.

(2) The case of the prosecution is that the prosecutrix-Ku. Sonamani is aged about 15 years. She and her younger sister namely Lalmani (P.W.-2) along with her grand-father, who is blind and deaf were present in their house on 8.6.2001. The

mother and father of the prosecutrix had gone to Sarguja for purchasing some cattle. At about 8-9 p.m., the appellant came to their house and sat on the cot which was there in the court-yard. Thereafter he asked for *Gudakhu* and water. When the prosecutrix went inside the room for bringing *Gudakhu* and water, he also followed her and in the room, he caught hold of her and threw her of the ground, thereafter put a piece of cloth in her mouth and committed forceful sexual intercourse against her. Further case of the prosecution is that while the appellant was committing sexual intercourse, the sister of the prosecutrix-Lalmani (P.W.-2) entered into the room and she tried to save her sister, on which, the appellant threatened her and she could do nothing. The prosecutrix became unconscious and the appellant went away from the place of occurrence. Though the incident has occurred on 08.06.2001 but the F.I.R. was lodged on 18.6.2001 vide Ex.-P/1. The explanation for the delay is that the mother and father were not in the house as they had gone to Sarguja. When they came back after 3-4 days, the prosecutrix and her sister, out of shy and fear, did not disclose the story to them but ultimately after inquiry from their end, the story was disclosed and then only, the report was lodged. After the report, the prosecutrix was sent for medical examination under requisition Ex.-P/7 on the same day and was examined by Dr. N.D. Ram (P.W.-6), who prepared her report Ex.-P/8. According to the said report, there were no external injuries on the person of the prosecutrix, there was no injury on the surface of private part but internal examination of vagina was painful, it was admitting one finger with pains, hymen was ruptured, on the *fourchette* slight laceration was present. The doctor did not give any definite opinion regarding complete penetration. The accused was arrested. He was also sent for medical examination under memo Ex.-P/3. He was examined by Dr. H.D. Dahire (P.W.-4), who found that he was capable of performing sexual intercourse. His report is Ex.-P/4. Site plan of the place of occurrence was prepared under Ex.-P/13 by *Patwari* Santosh Kumar Sahu (P.W.-9) and after completion of usual

investigation, the charge-sheet was filed in the Court of Judicial Magistrate, First Class, Katghora, who in turn committed the case to the Court of Sessions, Bilaspur, where the trial was conducted and the impugned judgment of conviction and order of sentence were passed. It is against this judgment passed by the Sessions Court; the appellant has filed this appeal.

(3) The conviction of the appellant is based upon the testimony of the prosecutrix (P.W.-1) and her sister Lalmani (P.W.-2).

(4) Learned counsel for the appellant argues that the prosecutrix and her sister both do not appear to be reliable witnesses, therefore, the conviction is bad in law.

(5) On the other hand, learned counsel for the State opposes the arguments advanced by learned counsel for the appellant and supports the judgment of conviction and order of sentences passed by the Sessions Court.

(6) I have heard the learned counsel for the parties at length and have also perused the records of the Sessions Court.

(7) First of all, the evidence regarding age of the prosecutrix is to be seen. According to the prosecution itself, particularly the F.I.R., the prosecutrix had not studied in any educational institution; therefore, no certificates etc., have been seized regarding her age nor any birth certificate etc. has been seized for the purpose. However, according to the advice of the lady Doctor, the prosecutrix was sent for Ossification test, the report of which shows that she was in between 16-17 years of age, but the said report has not been proved in this case. Apart from this,. there is evidence of father of the prosecutrix namely Karamsai (P.W.-3), who states that his daughter was aged about 15 years on the date of incident. There is no cross-examination on this point. Therefore, this part of evidence of the father

remains intact that the girl was aged about 15 years on the date of incident and his second daughter namely Lalmani (P.W.2) was younger to the prosecutrix and in this view of the matter, it can be held that she was aged about 15 years, on the date of incident.

(8) So far as evidence of the prosecutrix (P.W.1) is concerned, she has deposed that on the date of incident, she and her younger sister were present in the house. At about 9 p.m., the appellant came to their house and asked her for bringing *Gudakhu* and water, on this, she went inside the room and this appellant also followed her and in the room, he caught hold of her, threw her on the ground (floor) and thereafter, he put some clothes in her mouth and then he committed forcible sexual intercourse against her. On account of this, she became unconscious. She also deposes that at the time of commission of offence, her sister had entered into the room but the appellant had threatened her and had also dashed against her, on which, she went out from the room. She has further deposed that she did not disclose this story to anybody else. After two days, her mother and father had returned back, she has not disclosed the story to them also out of shy, but later on the story was told to them and a report vide Ex.P.1 was lodged. The defence has not been able to destroy the testimony of this witness so far as this fact of forcible sexual intercourse by the appellant is concerned.

(9) Lalmani (P.W.2), who is aged about 11 years, deposed that on the date of incident, her mother and father were not present in the house. At about 8 – 9 O' clock, the appellant came to their house and asked her sister for bringing water. When her sister went inside the room, he also went in the room and took her sister into his lap and thereafter he committed sexual intercourse after throwing her on the ground. In para 2, she deposed that when she reached there, the appellant said that he will beat her, due to which, she went out from the room. After some time, the appellant also went out from the room. She also

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deposed vide para 3 that after 2-3 days of the date of incident, her mother had come back. She has specifically mentioned vide para 3 that when she entered into the room, she had seen that some clothes were put in the mouth of her sister at the time of commission of sexual intercourse. Many questions have been put in the cross examination to discredit the testimony of this witness, but not a single question has been put in regard to putting the clothes in the mouth of the prosecutrix. Though, this witness has admitted in para 7 that her grand father was in the house on the said date, but she has further explained in this very paragraph that the grand father is blind and deaf and she had not gone to him to narrate the story after the incident.

(10) P.W.3 Karamsai, who is the father of the prosecutrix has also stated that when he returned back from Sarguja, where he had gone to purchase cattle, he saw that his daughter (prosecutrix) was not feeling well, on which, he inquired as to what is the matter? Firstly she did not disclose anything to him, but later on, after 2-3 days, she disclosed the matter to the mother and then he could come to know about the incident, which has taken place in their absence in the house. There are some omissions in his statement, but those omissions are only in relation to the observations of illness etc. of the daughter and not in relation to disclosure of factum of rape.

(11) Learned counsel for the appellant submits that the evidence of these two witnesses especially P.W.1 and P.W.2 appears to be unreliable and there is also inordinate delay in lodging the F.I.R. So far as reliability of these witnesses is concerned, there appears to be no reason to disbelieve them. Why the prosecutrix will make false statement is a question to be considered. Though it has been tried by the defence to make out a case that there were inimical relations between the family of the prosecutrix and the appellant, but no substantial base for believing such story has been brought by them on record. Another circumstance which may come for consideration is that

it may have been a case of consent between prosecutrix and the appellant and the younger sister of the prosecutrix since witnessed the incident, therefore, a false implication is being made, but this also does not require consideration on account of age of the girl and it does not appear to be correct because it clearly comes in the evidence of both the sisters that while committing sexual intercourse with the prosecutrix, the appellant put clothes in the mouth of the prosecutrix and the sister of the prosecutrix, who by chance, went inside the room (place of occurrence), had seen that a piece of cloth is put in the mouth of the prosecutrix. This rules out a possibility that there were some other relations between the prosecutrix and appellant and by chance, on the said date, the incident was noticed by the girl.

12. About the delay, it comes in the evidence of the prosecutrix that the parents were not in the house and they returned after 2-3 days and even after their return, they (she or her sister) did not disclose the story to them and when the parents could observe the features of the prosecutrix as she was feeling unwell and it was repeatedly asked by the parents, then only, the story was disclosed after 2 – 3 days of their arrival to the house. This conduct of the prosecutrix and her sister, appears to be natural. It has come in the evidence that the prosecutrix was recently married but her *Gowna* was not performed. In that situation, certainly, she can retain a reasonable apprehension in the mind that if she discloses these facts to family members or to any other member in the village or Society, the message may go to the in-laws place and she may not be admitted in the husband's house and her entire life may be ruined. It appears that both the sisters were keeping this apprehension and they had not disclosed this story at the earliest to the parents even after their arrival in the house, but the parents could notice the conduct of the prosecutrix as an ill person, they asked about it and then only the matter was disclosed and the report was lodged. This conduct of the prosecutrix and also that of the younger sister of

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the prosecutrix (P.W.2), appear to be quite natural and in such a situation, the delay in disclosing the matter and in further lodging the F.I.R. would not be treated as fatal to the prosecution and that does not effect the testimony of these two witnesses.

(13) In the opinion of this Court, the Court below has committed no illegality while convicting the appellant u/s 450 and 376 of I.P.C. on the basis of these two witnesses i.e., the prosecutrix (P.W.1) and her sister Lalmani (P.W.2) who is aged about 11 years and the conviction and sentences awarded to the appellant on such evidence cannot be interfered by this Court. The appeal has no merits. The same is liable to be and is dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Rao